

FILED  
U.S. DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
SEP 7 2005

05-11824 REK Civil Action No. 05-11824  
PAUL O'MARA and NEAL O'MARA )  
Plaintiffs, )  
v. )  
MARK J. DONNELLY, )  
SEBAGO PARTNERS, INC, and )  
UCOMPAREHEALTHCARE, LLC )  
Defendants. )

Bowler MJ

RECEIPT # 66698  
AMOUNT \$ 250  
SUMMONS ISSUED 4  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY. CLK. Fom  
DATE 9/8/05

**COMPLAINT**

Plaintiffs Paul O'Mara and Neal O'Mara (collectively referred to herein as the "Plaintiffs" or "the O'Maras") assert claims against Defendants arising under the Copyright laws of the United States, 17 U.S.C. §§ 101, *et seq.* with respect to software design and development works created by the O'Maras. Plaintiffs also assert supplemental claims arising under state law which are so related to the Copyright claims that they form part of the same case or controversy.

**Parties and Personal Jurisdiction**

1. Plaintiff Paul O'Mara is an individual residing at 31 Boudreau Ave., Marlborough, Middlesex County, Massachusetts. Paul O'Mara is a highly skilled software designer and developer, with experience in Technical Writing and Programming.
2. Plaintiff Neal O'Mara is an individual residing at 12221 Papaya Ct NE, Albuquerque, NM 87111. Neal O'Mara is a highly skilled software programmer.
3. Defendant Mark J. Donnelly ("Donnelly") is an individual residing at 406 Windsor Drive, Framingham, Middlesex County, Massachusetts. Upon information and belief, Donnelly

is the President of Defendants Sebago Partners, Inc., is the Manager and sole member of UCompareHealthCare, LLC., and is the sole owner of interests in such entities.

4. Defendant Sebago Partners, Inc. is a Maine corporation with a principal place of business in Framingham, Middlesex County, Massachusetts.

5. Defendant UCompareHealthCare, LLC (“UCHC”) is a Maine limited liability company with a principal place of business in Framingham, Middlesex County, Massachusetts. UCHC, by its counsel, has asserted that it is the successor in interest to Sebago Partners, Inc.

### **Subject Matter Jurisdiction and Venue**

6. This case is a civil action arising under the Copyright laws of the United States, 17 U.S.C. §§ 101, *et seq.* This Court has subject matter jurisdiction of this action pursuant to 17 U.S.C. § 501, 28 U.S.C. §1338(a), and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367(a) in that the claims are so related to claims with such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper pursuant to 28 U.S.C. §1391(b)(1), (b)(2) and (c) and 28 U.S.C. § 1400 in that the individual Defendant resides in this district, a substantial part of the events or omissions giving rise to the claims occurred in this district, and the corporate Defendants have principal places of business and transact business in this district and are subject to personal jurisdiction in this district.

### **Facts**

8. In or about June 2004, Donnelly and Paul O’Mara entered into an agreement for the development of Laundry Management computer software programming (the “Laundry Management Software”) that would manage day-to-day Laundromat operations including utility

usage, machine maintenance, coin count tracking, and related matters. Pursuant to that agreement, Donnelly and Paul O'Mara agreed that Donnelly would receive 80% of the proceeds from the Laundry Management Software and that Paul O'Mara would receive 20% of the proceeds. Donnelly represented that he would prepare a written document to memorialize the parties' agreement.

9. During the time period from June through October, 2004, Paul O'Mara worked approximately 330 hours on the development of the Laundry Management Software, including the development, creation, and authoring of original source code. Upon information and belief, Donnelly worked less than 20 hours on this project. Donnelly did not develop, create, or author any of the source code.

10. Donnelly and O'Mara scheduled a meeting for September 16, 2004 to review Paul O'Mara's work on the Laundry Management Software and to review and discuss a draft written document memorializing the parties' agreement regarding proceeds from the Laundry Management Software. Donnelly specifically represented that he would prepare a draft of that agreement for discussion at the meeting.

11. Donnelly and Paul O'Mara met at Donnelly's residence on September 16, 2004. Contrary to his representation, Donnelly did not present a draft agreement memorializing the parties' agreement regarding the proceeds of the Laundry Management Software. Donnelly instead discussed a new venture for the creation of an on-line health care service to facilitate objective comparisons of physicians, hospitals, and nursing homes for consumers and human resource managers. Donnelly represented that this venture was a bigger opportunity.

12. At that meeting, Donnelly presented Paul O'Mara with a document entitled "Confidentiality / Proprietary Information Agreement" (hereby referred to as the "Confidentiality

/ Proprietary Information Document (Paul O'Mara)", a true and accurate copy of which is attached hereto as Exhibit 1) and requested that Paul O'Mara sign such document.

13. Donnelly (individually and on behalf of Sebago Partners) and Paul O'Mara entered into an agreement pursuant to which Paul O'Mara agreed to perform certain software design and development and related services in connection with the new venture (an entity now known as UCompareHealthCare LLC), and Donnelly (individually and upon information and belief on behalf of Sebago Partners) agreed to issue to Paul O'Mara 2.5% of the voting stock in UCHC upon the incorporation of such entity and an additional 10% of such stock at a later time.

14. Donnelly and Paul O'Mara further agreed that, upon completion of the "feasibility" phase (namely the development of a prototype of the software), Donnelly and Sebago Partners would cause their counsel to prepare and issue formal written documents incorporating the business and issuing stock in accordance with the parties' agreement.

15. Paul O'Mara commenced work on the new health care venture in September, 2004, including preparation of software specifications, proposals, and source code.

16. In or about October, 2004, Donnelly terminated further development of the Laundry Management Software. At that time, the Laundry Management Software was approximately 90% complete.

17. Donnelly, Paul O'Mara, and others (generally including Jeff LaPointe, Brian Richardson, and Ryan Donnelly, who is the son of Mark Donnelly) commenced regular meetings regarding the health care venture on an approximately weekly or bi-weekly basis as of October 28, 2004. The initial meetings took place near Donnelly's residence in Framingham, Massachusetts. Subsequent meetings took place at UCHC's offices in Marlborough and in Framingham, Massachusetts.

18. Pursuant to those meetings, the individuals agreed that decisions regarding the new venture would be made by majority vote of Donnelly, Paul O'Mara, Jeff LaPointe, Brian Richardson, and Ryan Donnelly, each of which would have one vote.

19. Donnelly and Sebago Partners, by their counsel, notified Paul O'Mara at a meeting on November 4, 2004 that the new entity would be incorporated as "UCompareHealthCare, Inc." and that they had registered the name "UCompareHealthCare.com" for the corporation's website. Donnelly and Sebago Partners, by their counsel, also presented Paul O'Mara with a document entitled "Sebago Partners, Inc." (hereby referred to as the "Sebago Partners, Inc. Document (Paul O'Mara)" a true and accurate copy of which is attached hereto as Exhibit 2). The document did not purport to set forth any agreement about an assignment of copyrights. Donnelly's and Sebago Partner's counsel stated at the meeting that the Sebago Partners, Inc. Document "covered ownership of inventions." In response to questions about the document and whether it applied to the types of works that Paul O'Mara had produced prior to November 4, counsel responded that the parties had not invented anything yet.

20. The Sebago Partners, Inc. Document (Paul O'Mara) sets forth certain provisions which are stated to be "[i]n consideration for [Paul O'Mara's] engagement as an independent contractor by [Sebago Partners]."

21. In order to induce Paul O'Mara to execute the Sebago Partners, Inc. Document (Paul O'Mara), Sebago Partners and Donnelly further promised and agreed to pay Paul O'Mara at a rate which was comparable to his then full time salary for his "day job." The parties agreed that such payment was in addition to the equity interest to be received by Paul O'Mara. The parties subsequently agreed that Paul O'Mara would be paid at the rate of \$1,000 per week.



22. Sebago Partners, by Donnelly, and Paul O'Mara executed the Sebago Partners, Inc. Document (Paul O'Mara) on or about November 16, 2004.

23. Donnelly, Paul O'Mara and others present at the meeting on November 4, 2004 discussed the engagement of Neal O'Mara, who is the brother of Paul O'Mara, to perform certain specific programming on a "fee for service" basis as an "outside contractor." The parties agreed at the November 17, 2004 meeting to engage Neal O'Mara to perform the specified programming work as an outside contractor. In December, 2004, a specification for the VB.NET programming was forwarded to Neal O'Mara.

24. On or about November 26, 2004, Sebago Partners, by Donnelly, and Neal O'Mara executed a document entitled "Sebago Partners, Inc." (hereby referred to as the "Sebago Partners, Inc. Document (Neal O'Mara) ", a true and accurate copy of which is attached hereto as Exhibit 3. The document did not purport to set forth any agreement about an assignment of copyright interests.

25. The Sebago Partners, Inc. Document (Neal O'Mara) sets forth certain provisions which are stated to be "[i]n consideration for [Neal O'Mara's] engagement as an independent contractor by [Sebago Partners]."

26. In or about January, 2005, Donnelly, Sebago Partners, and UCHC entered into an agreement with Neal O'Mara pursuant to which Neal O'Mara agreed to perform certain programming defined in a "Specifications For Contractual Programming For Feasibility Phase Prototype" document and Sebago Partners would pay him \$5,000 for such work upon completion of that deliverable.

27. As of January 26, 2005, Donnelly and Sebago Partners agreed to issue Neal O'Mara 2.5% of the voting stock of UCHC upon incorporation of such entity and an additional 10% of

such stock at a later time in consideration for certain work designing UCHC's web page and web presence, continuing the VB.NET programming and maintenance, and certain "security" work. It was further agreed that such equity was in addition to the \$5,000 payable to him pursuant to the prior agreement.

28. On or about February 22, 2005, Donnelly and Neal O'Mara executed a document entitled "Confidentiality / Proprietary Information Agreement" (hereby referred to as the "Confidentiality / Proprietary Information Document (Neal O'Mara)", a true and accurate copy of which is attached hereto as Exhibit 4).

29. Paul O'Mara and Neal O'Mara designed, developed, created, and authored the works identified in the document attached hereto as Exhibit 5 (hereinafter referred to as the "Works"), which such works contained their original ideas, source code, and writing. Paul O'Mara worked approximately 1,500 hours and Neal O'Mara worked approximately 1,000 hours on such works.

30. As of March 1, 2005, the parties completed the feasibility phase through development of the website and demonstrated its successful operation. Donnelly acknowledged that the feasibility phase had been completed as of that date and distributed a vesting schedule regarding issuance of stock in the new entity.

31. Upon information and belief, Donnelly and Sebago Partners caused UCHC to be formed as a limited liability company on or about April 5, 2005. Donnelly stated at a meeting held on April 12, 2005 that Donnelly and corporate counsel would be distributing "all appropriate paperwork and Company papers" to each member of the LLC, specifically including Paul O'Mara, Neal O'Mara, and others.

32. Paul O'Mara and Neal O'Mara completed the final design components and caused such components to be made available to Donnelly on the morning of May 31, 2005.

33. Shortly after the final design components were made available to Donnelly, Donnelly then sent an email to Paul O'Mara and Neal O'Mara at 10:38 a.m. on May 31, 2005 which attached various documents. Donnelly stated in his email that:

Attached, please find the basis of our legal relationship. I expect to have the "Operating Agreement" by 3:00 PM today. At that point I will forward for your review.

I ask you to remember that this is the "Draft" and that I do not expect for you to have to sign these documents in Maine tomorrow. Instead our visit to Maine tomorrow will be for the benefit of meeting Jim and asking any questions that you think would help clarify any aspect of the relationship. After that and in concert with your own counsel you should have enough information to make your comments.

Thank you for your patience and I look forward to your comments.

34. The attached documents included a memorandum (regarding "Membership Interests") from Donnelly's, Sebago Partners', and UCHC's corporate counsel, Pierce Atwood LLP of Portland, Maine, dated May 27, 2005, an offer letter, and a document entitled Non-Disclosure, Non-Solicitation and Non-Competition Agreement.

35. Later that day, at 6:02 p.m., Donnelly forwarded an additional document to Paul O'Mara and Neal O'Mara, entitled UCompareHealthcare, LLC Operating Agreement.

36. Contrary to the parties' agreement and the representations of Donnelly and Sebago Partners, the memorandum and related documents provided by corporate counsel stated and/or provided that:

- a. Rather than issuing voting stock in a corporation, membership units in a limited liability company would be issued.
- b. The membership units would be issued to Paul O'Mara and Neal O'Mara "in exchange for future services", while Donnelly would have an "existing interest" based on the development efforts to date.



- c. Donnelly would be issued "Class A membership units", which would "carry certain preferences and rights different from other classes of membership units" – including distribution and liquidation preferences, certain "special voting rights", and the ability to designate the manager of UCHC;
- d. Donnelly would be the sole Class A member;
- e. The other individuals, including Paul O'Mara and Neal O'Mara, would be issued so called "profits" interests, designated as "Class B membership units," "in exchange for future services to the Company";
- f. The Class B units would be subject to a four year vesting schedule;
- g. The Class B units were subject to "forfeiture" if certain milestones were not met;
- h. The Class B units were valued at zero as of the date of the grant and were "limited to future earnings and appreciation of the Company's value."
- i. The Class B units would only be entitled to distributions after such interests had vested and after Donnelly had received a return of his so- called "contributed capital preference amount."
- j. Distributions to Class A and B units would be made at the discretion of the manager of UCHC.
- k. No member would be entitled to "a salary, draw or other cash distribution for six months from the date of issuance."
- l. The Class B membership units would be granted only upon the commencement of full time service with UCHC, such grants to be subject to the vesting schedule.

- m. The Class B membership units would be forfeited if the member's status as an "Active Member" was terminated for cause;
- n. The units were subject to the right of the Company to repurchase the vested units "at fair market value as determined by the Management Committee if your status as an Active Member terminates for any reason other than termination for 'Cause.'"
- o. All unvested units would expire and be forfeited to UCHC if the status as an Active Member were terminated "for any reason whatsoever."
- p. The Class B units were subject to a "drag-along" right in favor of the Class A member, providing that the Class B member would be required to sell their interest in UCHC if the Class A member elected to sell his entire interest.
- q. The Class B unit members would not be able to control the business and affairs of UCHC, would not be managers of UCHC, and would be subject to dilution of their interest.
- r. The Class B unit members status as an "Active Member" was "at will," meaning that UCHC could terminate such status "at any time and for any reason, with or without cause."
- s. The Class B unit members would be required to sign a Non-Disclosure, Non-Solicitation and Non-Competition Agreement, which provided for the assignment of copyright interests to UCHC.

37. Paul O'Mara and Neal O'Mara notified Donnelly on May 31, 2005 that the documents did not reflect the parties' agreements and were not acceptable. Donnelly stated that he agreed that the documents did not reflect the parties' agreements and needed to be corrected.

Donnelly further stated that he had requested that his counsel change the documents. Donnelly promised to forward the revised documents to the O'Maras as soon as he received them from counsel. Donnelly also confirmed that Paul O'Mara and Neal O'Mara were entitled to receive "vested" interests in UCHC. Donnelly further stated that he would pay Paul O'Mara and Neal O'Mara for their prior work if Donnelly and the O'Maras were unable to reach agreement regarding the documents that Donnelly had presented to the O'Maras earlier that day.

38. On June 1, 2005, the O'Maras, by their counsel's e-mail to Donnelly, further notified Donnelly, Sebago, and UCHC that the proposed written agreements that had been provided to the O'Maras did not reflect the agreements of the parties and requested that Donnelly review the proposed written agreements and respond to such notification. The O'Maras further notified Donnelly, Sebago, and UCHC that "[a]ny unauthorized use of the materials created by the O'Maras would be a violation of their intellectual property rights."

39. Donnelly, Sebago Partners, and UCHC have failed and refused to compensate the O'Maras for the services performed by the O'Maras or to engage in any discussion about the issues and concerns addressed in the O'Maras' counsel's June 1 correspondence.

40. Paul O'Mara has not at any time received any compensation, equity, or consideration for any of the work he performed in connection with UCHC, specifically including all of the Works.

41. With the limited exception of \$5,000 that he received in connection with certain specific programming performed on a fee for service basis, Neal O'Mara has not at any time received any compensation, equity, or consideration for any of the work he performed in connection with UCHC - specifically including all of the Works.

42. By letter dated June 9, 2005, UCHC, by its counsel, asserted that UCHC was the successor entity to Sebago Partners and that the issuance of equity in UCHC was “contingent on meeting both individual and group objectives, and subject to Mark Donnelly’s overall concurrence.” By its counsel, UCHC further stated that “UCHC considers the relationship between the O’Maras and UCHC terminated effective as of June 1, 2005.”

43. UCHC, by its counsel’s letter dated June 9, 2005, further asserted that the O’Maras had assigned to UCHC “all their rights to any of their work on the project or on behalf of UCHC” and that such work was the property of UCHC.

44. By letter dated June 22, 2005 from their counsel, the O’Maras again advised and notified Donnelly, Sebago Partners, and UCHC that the O’Maras are owners of all works created by them during their association with Sebago Partners and UCHC as identified on the Exhibit A attached to that letter. The O’Maras, by their counsel’s letter, demanded that UCHC cease and desist from all uses of the Works, return all Works to the O’Maras immediately, and destroy any and all copies in its possession. The O’Maras further demanded compensation, issuance of the stock as promised and agreed upon, and that UCHC provide an accounting and distribution of profits owed upon commercialization of any property that is jointly owned by UCHC and the O’Maras.

45. By letter dated July 5, 2005, UCHC, by its counsel, asserted that its purported predecessor entity, Sebago Partners, is the sole and exclusive owner of the Works.

**Count I**  
**(Declaratory Judgment)**

46. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 45 of the Complaint as if fully set forth herein.

47. The Works contain a large amount of material wholly original with Paul O'Mara and Neal O'Mara and are copyrightable subject matter under the laws of the United States.

48. At all times herein relevant, Plaintiffs complied in all respects with the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

49. Each of the Works is an original work, copyrightable under the Copyright Act.

50. Plaintiffs were not at any time employees of any of the Defendants.

51. The parties did not enter into any agreement that classifies Plaintiffs' relationship with Defendants as that of work-made-for-hire under the United States Copyright Act.

52. Plaintiffs have not authorized Defendants to copy, reproduce, manufacture, disseminate, or distribute the Works.

53. The O'Maras have taken all necessary measures to protect and maintain the value of their Works and they have filed registration applications and fees for the exclusive rights and privileges in and to the copyrights in the Works under the Copyright Act, 17 U.S.C. §§ 101, *et seq.* The O'Mara's have received the following Certificates of Registration: TXu1-244-572, TXu1-223-149, TXu1-223-148, TXu1-223-146, TXu1-223-147, TXu1-223-150, TXu1-223-296, and TXu1-244-125. Additional registrations are currently pending.

54. There exists an actual controversy and a conflict of asserted rights between the parties with respect to the copyrights in the Works and with respect to the Confidentiality / Proprietary Information Agreement Document (Paul O'Mara), the Sebago Partners, Inc. Document (Paul O'Mara), the Sebago Partners, Inc. Document (Neal O'Mara), the Confidentiality / Proprietary Information Agreement Document (Neal O'Mara) and the parties' agreements regarding the issuance of equity in UCHC, as more fully set forth above.



55. Plaintiffs are interested parties in accordance with, and seek a declaration of their rights pursuant to, 28 U.S.C. § 2201.

56. Plaintiffs request that the Court enter declarations with respect to the parties' rights, including but not limited to declarations that Plaintiffs are the exclusive owners of the copyright in such of the Works in which Plaintiffs are the sole proprietors of rights, title and interest, that Plaintiffs are the joint owners of the copyright in such of the Works in which Plaintiffs are the joint proprietors of rights, title and interest, that Plaintiffs did not purport to assign any copyrights to Defendants, that such documents or purported agreements by which Defendants claim any rights against Plaintiffs, including any interest in the Works, are void and unenforceable for reasons including, but not limited to, fraud, the lack of contemplated consideration, that Defendants repudiated their agreements with Plaintiffs, and that such documents are deemed rescinded.

**COUNT II**  
**(Breach of Contract)**

57. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 56 of the Complaint as if fully set forth herein.

58. Defendants, by their conduct set forth above, breached their contractual duties and obligations to Plaintiffs, including but not limited to the failure to issue equity in accordance with the parties' agreement, the failure to compensate Plaintiffs, and the repudiation of the parties' agreements.

59. Plaintiffs fully complied with their contractual obligations.

60. Plaintiffs have been damaged by Defendants' breaches of contract.

**COUNT III**  
**(Breach of the Covenant of Good Faith and Fair Dealing)**

61. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 60 of the Complaint as if fully set forth herein.

62. Defendants owed the duty of utmost good faith and fair dealing to Plaintiffs.

63. Defendants, by their conduct set forth above, breached their duties of good faith and fair dealing to Plaintiffs.

64. Plaintiffs have been damaged by Defendants' breaches of the duty of good faith and fair dealing.

**COUNT IV**  
**(Quantum Meruit)**

65. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 64 of the Complaint as if fully set forth herein.

66. Defendants requested and directed Plaintiffs to render services to and for the benefit of Defendants.

67. In response to those requests, Plaintiffs performed services for the benefit of Defendants for which Plaintiffs have not been paid.

68. Defendants owe Plaintiffs for the fair and reasonable value of the services rendered by Plaintiffs to Defendants for which Defendants have not made payment.

**COUNT V**  
**(Fraud)**

69. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 68 of the Complaint as if fully set forth herein.

70. Defendants made false statements of material fact to Paul O'Mara and Neal O'Mara, specifically including the false statements set forth in paragraphs 10, 13, 14, 18, 21, 27, and 37 above.

71. Defendants knew, or should have known, that the statements were false.

72. Defendants made the false statements with the intention that Paul O'Mara and Neal O'Mara would rely upon such statements and render services for the benefit of Defendants and execute the documents identified in paragraphs 12, 19, 24, and 28 above.

73. Paul O'Mara and Neal O'Mara reasonably relied upon Defendants' statements.

74. Paul O'Mara and Neal O'Mara were damaged as a result of Defendants' fraudulent conduct.

WHEREFORE, Plaintiffs Paul O'Mara and Neal O'Mara respectfully request that the Court enter the following relief:

1. Enter judgment in favor of Plaintiffs and against Defendants on each and every Count of the Complaint and award Plaintiffs damages, interest, costs, and attorney's fees.
2. Enter declarations that Plaintiffs are the exclusive owners of the copyright in such of the Works in which Plaintiffs are the sole proprietors of rights, title and interest, that Plaintiffs are the joint owners of the copyright in such of the Works in which Plaintiffs are the joint proprietors of rights, title and interest, that Plaintiffs did not purport to assign any copyrights to Defendants, and that such documents or purported agreements by which Defendants claim any rights against Plaintiffs, including any interest in the Works, are void and unenforceable.

3. After hearing and notice, enter an Order preliminarily and permanently restraining and enjoining Defendants and their officers, agents, servants, employees, and attorneys, and all others acting in active concert with them, from copying, reproducing, manufacturing, duplicating, disseminating, distributing, and using the Works.
4. Such other and further relief as the Court deems just and proper.

**Jury Demand**

The Plaintiffs hereby demand a trial by jury on all issues so triable.

**PLAINTIFFS**

**PAUL O'MARA AND NEAL O'MARA**

By their Attorneys,

  
Dale C. Kerester, Esq.

LYNCH, BREWER, HOFFMAN & FINK, LLP  
101 Federal Street, 22<sup>nd</sup> Floor  
Boston, MA 02110-1800  
(617) 951-0800  
dkerester@lynchbrewer.com

  
William E. O'Brien, Esq.

Law Office of William E. O'Brien, Esq.  
363 Bailey Road  
Holden, MA 01520  
(508) 829-5185  
william@masstechlawyer.com

Dated: September 7, 2005

## **CONFIDENTIALITY / PROPRIETARY INFORMATION AGREEMENT**

This agreement is made as of the 16<sup>th</sup> day of September, 2004, by and between SEBAGO Partners herein ("SPI"), a Maine Corporation, having its principal place of business at 25 Burke Road Extension, Standish, Maine 04084.

WHEREAS Paul O'Mara is being considered by "SPI" as a possible independent contractor, or consultant, in connection with "SPI" internet, marketing, and businesses, and WHEREAS Paul O'Mara may become exposed to information which "SPI" considers confidential, NOW THEREFORE, in consideration of the disclosure of such information, the premises and the mutual covenants contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. As used herein, "Proprietary Information" shall mean any secret, or private, or confidential information of "SPI" concerning the intellectual property, design, manufacture, marketing methods, customers lists, use, purchase or sale of its products, services or materials such as may be contained in but not limited to "SPI"'s business methods, processes, techniques, research, development, marketing plans, mailing lists, customer lists, and proposals, all to the extent that (i) such information is not readily disclosed by inspection of "SPI"'s products and (ii) such



party has expressly or impliedly protected such information from unrestricted use by others.

Proprietary information shall include information regarding business plans.

2. Paul O'Mara shall not disclose to any third party any Proprietary Information of "SPI"'s for a period of three years from the latter of the date of this Agreement or the date on which such Proprietary Information is disclosed for any purpose other than evaluation of its interest in entering into a business arrangement with "SPI'.
3. NOTWITHSTANDING the foregoing, Paul O'Mara shall not be required to maintain in confidence:
  - a. information which is or has subsequently become public knowledge without fault of the receiving party for whom such information had been disclosed by the other party hereto;
  - b. information of "SPI"'s which is known to Paul O'Mara at the time of disclosure as evidenced by prior written records and which is not subject to an obligation of confidence imposed in another agreement or relationship; or
  - c. information which is lawfully obtained from a third party entitled to disclose it.
4. "SPI" and Paul O'Mara represent, each to the other, that each has a policy and procedure designed to protect trade secrets or other rights in its own Proprietary Information, including notices to and agreements with employees and agents to prevent unauthorized disclosure or use of such Proprietary Information. Any and all Proprietary Information disclosed hereunder shall be subject to such policies and procedures.

Date: 9/16/04 By: [Signature]  
its PRESIDENT

SEBAGO Partners

Paul O'Mara

Marlborough, MA 01520

Date: 9/16/04  
By: [Signature]

## Sebago Partners, Inc.

**CONFIDENTIAL INFORMATION** means information disclosed to me or known by me as a result of my relationship with SP, not generally known in the trade or industry in which SP is engaged, about SP's business operations, customers, suppliers, products, processes, **EMPLOYEE/CONTRACTOR CONFIDENTIALITY AGREEMENT**

Paul O'Mara  
(Name)  
31 Boudreau Ave. Marlborough MA 01752  
(Residence Address) (City) (State) (Zip)

Terms used in this agreement:

**SP** means Sebago Partners, Inc., its successors or assigns.

**INVENTIONS** means any discoveries, improvements, programs or program architecture and ideas, whether patentable or not.

I AM CURRENTLY ENGAGED AS AN INDEPENDENT CONTRACTOR OR DESIRE TO BE ENGAGED AS AN INDEPENDENT CONTRACTOR BY SP IN A CAPACITY IN WHICH I MAY RECEIVE OR CONTRIBUTE TO CONFIDENTIAL INFORMATION.

In consideration by my engagement as an independent contractor by SP:

1. Unless I first secure SP's written consent (which consent may be unreasonably withheld), I will not disclose, use, disseminate, lecture upon, or publish **CONFIDENTIAL INFORMATION** of which I become informed during my engagement as an independent contractor or otherwise, whether or not developed by me, provided that I may disclose same for the sole purpose of carrying out my work assignments at SP.
2. I shall not disclose to SP or induce SP to use any secret or confidential information or material belonging to others, including my former employers, if any.
3. I agree to disclose promptly to SP all **INVENTIONS** that are related to the actual or anticipated activities of SP conceived or made by me whether or not during the course of my rendering services on behalf of SP or with the use of SP's facilities, materials, or personnel, either solely or jointly with another or others at any time during my engagement as an independent contractor or otherwise by SP. Related to the actual or anticipated business or activities of SP, or related to its actual or

anticipated research and development or suggested by or resulting from any task assigned to me or work performed by me for, or on behalf of SP, I assign and agree to assign my entire right, title, and interest therein to SP.

4. I shall, whenever requested to do so by SP, execute any applications, assignments, or other instruments which SP shall consider necessary, to apply for and obtain letters of patent, trademarks, service marks, or the like in the United States, or any foreign country, or to protect otherwise SP's interests. These obligations shall continue beyond the termination of my engagement with SP with respect to INVENTIONS conceived or made by me during my period of relationship, and shall be binding upon my executors, administrators, or other legal representatives.
5. I will not assert any rights under any inventions as having been made or acquired by me prior to my being employed by SP unless such INVENTIONS are identified on a sheet attached hereto and signed by me as of the date of this agreement.
6. Upon termination or the conclusion of my relationship with SP for any reason, I shall turn over to a designated individual at SP all property then in my possession or custody and belonging to SP. I shall not retain any copies or reproductions of computer discs, correspondence, memoranda, notes, reports, notebooks, drawings, photographs, or other documents relating in any way to the affairs of SP or which are entrusted to me at any time during my relationship with SP.
7. I hereby represent that I am not subject to any confidentiality or non-competition agreement or any other similar type of restriction that would affect my ability to devote my attention and carry out my duties, responsibilities or relationship with SP.
8. I ACKNOWLEDGE HAVING READ, EXECUTED, AND RECEIVED A COPY OF THIS AGREEMENT, and agree that with respect to the subject matter hereof it is my entire agreement with SP superseding any previous oral or written communications, representations, understandings, or agreements with SP or any of its officials or representatives.
9. This agreement shall be interpreted and enforced in accordance with the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal, this 16th day of November, 2004.

By: 

Name: Paul O'Mara

Sebago Partners, Inc.

By: 

## Sebago Partners, Inc.

**CONFIDENTIAL INFORMATION** means information disclosed to me or known by me as a result of my relationship with SP, not generally known in the trade or industry in which SP is engaged, about SP's business operations, customers, suppliers, products, processes, **EMPLOYEE/CONTRACTOR CONFIDENTIALITY AGREEMENT**

NEAL O'Mara  
(Name)

UNIT C 1654, 701 MOORE AVE LEWISBURG PA 17837  
(Residence Address) (City) (State) (Zip)

Terms used in this agreement:

**SP** means Sebago Partners, Inc., its successors or assigns.

**INVENTIONS** means any discoveries, improvements, programs or program architecture and ideas, whether patentable or not.

I AM CURRENTLY ENGAGED AS AN INDEPENDENT CONTRACTOR OR DESIRE TO BE ENGAGED AS AN INDEPENDENT CONTRACTOR BY SP IN A CAPACITY IN WHICH I MAY RECEIVE OR CONTRIBUTE TO CONFIDENTIAL INFORMATION.

In consideration by my engagement as an independent contractor by SP:

1. Unless I first secure SP's written consent (which consent may be unreasonably withheld), I will not disclose, use, disseminate, lecture upon, or publish **CONFIDENTIAL INFORMATION** of which I become informed during my engagement as an independent contractor or otherwise, whether or not developed by me, provided that I may disclose same for the sole purpose of carrying out my work assignments at SP.
2. I shall not disclose to SP or induce SP to use any secret or confidential information or material belonging to others, including my former employers, if any.
3. I agree to disclose promptly to SP all **INVENTIONS** that are related to the actual or anticipated activities of SP conceived or made by me whether or not during the course of my rendering services on behalf of SP or with the use of SP's facilities, materials, or personnel, either solely or jointly with another or others at any time during my engagement as an independent contractor or otherwise by SP. Related to the actual or anticipated business or activities of SP, or related to its actual or



anticipated research and development or suggested by or resulting from any task assigned to me or work performed by me for, or on behalf of SP, I assign and agree to assign my entire right, title, and interest therein to SP.

4. I shall, whenever requested to do so by SP, execute any applications, assignments, or other instruments which SP shall consider necessary, to apply for and obtain letters of patent, trademarks, service marks, or the like in the United States, or any foreign country, or to protect otherwise SP's interests. These obligations shall continue beyond the termination of my engagement with SP with respect to INVENTIONS conceived or made by me during my period of relationship, and shall be binding upon my executors, administrators, or other legal representatives.
5. I will not assert any rights under any inventions as having been made or acquired by me prior to my being employed by SP unless such INVENTIONS are identified on a sheet attached hereto and signed by me as of the date of this agreement.
6. Upon termination or the conclusion of my relationship with SP for any reason, I shall turn over to a designated individual at SP all property then in my possession or custody and belonging to SP. I shall not retain any copies or reproductions of computer discs, correspondence, memoranda, notes, reports, notebooks, drawings, photographs, or other documents relating in any way to the affairs of SP or which are entrusted to me at any time during my relationship with SP.
7. I hereby represent that I am not subject to any confidentiality or non-competition agreement or any other similar type of restriction that would affect my ability to devote my attention and carry out my duties, responsibilities or relationship with SP.
8. I ACKNOWLEDGE HAVING READ, EXECUTED, AND RECEIVED A COPY OF THIS AGREEMENT, and agree that with respect to the subject matter hereof it is my entire agreement with SP superseding any previous oral or written communications, representations, understandings, or agreements with SP or any of its officials or representatives.
9. This agreement shall be interpreted and enforced in accordance with the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal, this 16 day of November, 2004.

By: 

Name: Neal O'Mara

Sebago Partners, Inc.

By: 

**CONFIDENTIALITY / PROPRIETARY INFORMATION AGREEMENT**

This agreement is made as of the 22 day of February, 2005, by and between SEBAGO Partners herein ("SPI"), a Maine Corporation, having its principal place of business at 25 Burke Road Extension, Standish, Maine 04084 and MR. NEAL O'MARA of Albuquerque, NM 07111 ("Third Party").

WHEREAS Third Party is being considered by SPI as a possible independent contractor, or consultant, in connection with SPI's healthcare related internet, marketing project and related possible businesses (the "Business"); and

WHEREAS Third Party may become exposed to information which SPI considers confidential relating to the Business.

NOW THEREFORE, in consideration of the disclosure of such information, the promises and the mutual covenants contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. As used herein, "Proprietary Information" shall mean any secret, or private, or confidential information of SPI concerning the intellectual property, design, manufacture, marketing methods, customers lists, use, purchase or sale of its products, services or materials such as may be contained in but not limited to SPI's business methods, processes, techniques, research,

development, marketing plans, mailing lists, customer lists, and proposals, all to the extent that (i) such information is not readily disclosed by inspection of SPI's products or materials and (ii) such party has expressly or impliedly protected such information from unrestricted use by others. Proprietary Information shall include information regarding business plans.

2. Third Party shall not disclose to any third party any Proprietary Information of SPI's for a period of three years from the latter of the date of this Agreement or the date on which such Proprietary Information is disclosed for any purpose other than evaluation of its interest in entering into a business arrangement with SPI.
3. NOTWITHSTANDING the foregoing, Third Party shall not be required to maintain in confidence:
  - a. information which is or has subsequently become public knowledge without fault of the receiving party for whom such information had been disclosed by the other party hereto;
  - b. information of SPI's which is known to Third Party at the time of disclosure as evidenced by prior written records and which is not subject to an obligation of confidence imposed in another agreement or relationship; or
  - c. information which is lawfully obtained from a third party entitled to disclose it.
4. SPI and Third Party represent, each to the other, that each has a policy and procedure designed to protect trade secrets or other rights in its own Proprietary Information, including notices to and agreements with employees and agents to prevent unauthorized disclosure or use of such Proprietary Information. Any and all Proprietary Information disclosed hereunder shall be

subject to such policies and procedures.

SEBAGO Partners

Date: 2/23/05

By: [Signature]

Its: President

Third Party: By: [Signature]

Address: 12231 Papaya Ct. NE Albuquerque, NM 87111

Date: 2/23/05

By: Neal O'Mara

List of Copyrights Owned by Paul and Neal O'Mara

- Laundry Management Database (LMDB.mdb)
- Look and Feel of Laundry Management Suite (screenshots: NewCollectionScreen.jpg, NewVendPriceScreen.jpg, VendMultiSelect.bmp)
- Proposed Technical Approach (Laundry Management Software.doc)
- Descriptions of Laundry Management Components (Modules) (LMComponents.doc)
- Database Structure (LMDBTables.doc)
- Laundry Management Flowchart (LMFlow.jpg)
- Add Customer Module
- Add Utility Module
- Add Vendor Module
- Collection Module
- Employee Maintenance Module
- Gas Dryer Efficiency Module
- Graphics (excluding Supawash Trademarked Logo)
- Icons (excluding Supawash Trademarked Logo)
- Installation Kits
- Administrative Module
- Application Main Module
- Machine Maintenance Module
- Vend Price Management Module
- Reporting Components (including module and reports)
- Water Meter Reader Module
- ContentManagementSpecV0-1.doc
- Logic for User Accounts Component.doc
- Revised User Accounts Business LogicV2.doc
- UserAccountsFeb21.jpg
- AccountActivationForCorporateModule.doc
- LogicUserAcctsV1\_Draft1.doc
- Revised User Accounts Business Logic.doc
- HardwareRFPV1\_Draft1.doc
- HardwareRFPV2.doc
- NetworkDiagram1.jpg
- NetworkDiagram2.jpg
- Draft0.doc
- InfrastructureRFPUpdate.doc
- UCHC\_RFPV1.doc



- UCHC\_RFPV1-1.doc
- Proposed Expedited Hardware Strategy.doc
- MockProposal.doc
- HardwareRFP\_12-5-04.doc
- HardwareRFPV1\_Draft2.doc
- HardwareRFPV1\_Draft2b.doc
- HardwareRFPV1\_Draft3.doc
- HardwareRFPV1\_Draft3b.doc
- HardwareRFPV1\_Draft4.doc

**"Specification for Information Technology Architecture: Feasibility Phase"**

- Draft1-0.doc
- Draft1-1.doc
- Draft1-2.doc
- Draft1-3.doc
- Draft1-4.doc
- Draft1-5.doc
- Draft1-6.doc
- Draft1-7.doc
- Draft1-8.doc
- Draft1-9.doc
- Draft1.doc
- Draft2-0.doc
- Draft2-1.doc
- Draft2-2.doc
- Draft2-3.doc
- Draft2-4.doc
- Draft3-0.doc
- Draft3-1.doc
- Draft3-2.doc
- Draft3-3.doc
- Draft3-4.doc
- Draft3-5.doc
- Draft3-6.doc
- Draft3-7.doc
- Draft3-8.doc
- Draft3-9.doc
- Draft4-0.doc
- Draft4-1.doc
- Draft4-2.doc
- Draft4-3.doc

- Draft4-4.doc
- Draft4-5.doc
- Draft4-6.doc
- FeasibilityPhaseUpdateDraft1-0.doc
- FeasibilityPhaseUpdateDraft1-1.doc
- FeasibilityPhaseUpdateDraft1-2.doc
- FeasibilityPhaseUpdateDraft1-3.doc
- FeasibilityPhaseUpdateDraft1-4.doc
- FeasibilityPhaseUpdateDraft1-5.doc
- FeasibilityPhaseUpdateDraft1-6.doc
- FeasibilityPhaseUpdateDraft1-7.doc
- FeasibilityPhaseUpdateDraft1-8.doc
- FeasibilityPhaseUpdateDraft1-9.doc
- FeasibilityPhaseUpdateDraft2-0.doc
- FeasibilityPhaseUpdateDraft2-1.doc

4/30/05

- About Us.doc
- Contact Us.doc
- Employers.doc
- Forgot Password.doc
- Hospitals.doc
- Individuals.doc
- Welcome Page.doc

1/14/05-1/15/05

- About Us.doc
- MainPageContent.doc

**Flowcharts/Diagrams**

- CompareDoctorsV1.jpg
- CompareDoctorsV2.jpg
- CompareFacilitiesV1.jpg
- CompareFacilitiesV2.jpg
- WebsiteMapV2.jpg
- WebsiteStructureV0c.jpg
- WelcomePageV1.jpg
- WelcomePageV2.jpg

**"Specification For Contractual Programming"**

- Required Programs for Feasibility Phase.doc
- SpecForContractProgrammingV1.doc
- SpecForContractProgrammingV2.doc
- SpecForContractProgrammingV2b.doc

- SpecForContractProgrammingV4.doc (co-authored with Brian Richardson)
- SpecForContractProgrammingV4\_PaulComments.doc (co-authored with Brian Richardson)
- SpecForContractProgrammingV5.doc (co-authored with Brian Richardson)
- SpecForContractProgrammingV6.doc (co-authored with Brian Richardson)

**"From Text File to Advanced Metrics: Building the Backend"**

- BuildingTheBackendDraft1-0.doc
- BuildingTheBackendDraft1-1.doc
- BuildingTheBackendDraft1-2.doc
- BuildingTheBackendDraft1-3.doc
- BuildingTheBackendDraft1-4.doc
- BuildingTheBackendDraft1-5.doc
- BuildingTheBackendDraft1-6.doc
- BuildingTheBackendDraft1-7.doc
- xBuildingTheBackendDraft.doc

**"Functional Specification"**

- FuncSpecOutlineV1\_BU.doc
- FuncSpecOutlineV1\_bu2.doc
- FuncSpecOutlineV1.doc
- FuncSpecOutlineV2b.doc (co-authored with Mark Donnelly)
- FuncSpecOutlineV3.doc (co-authored with Mark Donnelly)
- FuncSpecOutlineV3b.doc (co-authored with Mark Donnelly)
- FuncSpecOutlineV3c.doc (co-authored with Mark Donnelly)
- FuncSpecOutlineV4.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-1.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-2.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-3.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-4.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-5.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-6.doc (co-authored with Mark Donnelly)
- FuncSpecDiscussionDraftV1-7.doc (co-authored with Mark Donnelly)
- FuncSpecDraft4-11-05.doc (co-authored with Mark Donnelly)
- FuncSpecDraftP1.doc (co-authored with Mark Donnelly)
- FuncSpecDraftP2.doc (co-authored with Mark Donnelly)
- FuncSpecLessCharts.doc (co-authored with Mark Donnelly)
- AdvancedMetricsDBObjectFlow.doc
- Database-Specific Flow Charts (appDataImport\_Draft3\_12-27-04.jpg, appDataImport\_Draft3\_12-27-04\_P2.jpg, BackendDraft1P1\_V1.tif, BackendDraft1P2\_V1.tif)
- Database Design Specs.doc
- UCHC2\_Data.MDF

- 6-1-05DBScript.sql
- UCHCDatabaseScripts.doc
- DTS Jobs
- SQL Database Object Naming Conventions.doc
- Stored Procedures
  - \_Dev\_AnswerCAHPS
  - \_Dev\_CAHPS\_AddNewSurvey
  - \_Dev\_CAHPS\_UserStartSurvey
  - \_Dev\_CAHPSClearQuestionsToTheRight
  - \_ErrorTrapExample
  - \_ErrorTrapExample2
  - \_LatLongGuessNTest
  - am\_NewUserLogin
  - ApproxDistanceCalc
  - ApproxDistanceCalc2
  - ApproxDistanceCalc3
  - ApproxDistanceCalc4
  - ApproxDistanceCalc5
  - ApproxDistanceCalc6
  - ApproxDistanceCalc7
  - ApproxDistanceCalc8
  - ApproxDistanceCalc9
  - BuildAMT7
  - BuildDBObjectsList
  - BuildFeas\_HCUPAdvancedMetrics
  - BuildFEAS\_TestRptPOS
  - BuildHCUPHCUPHCUP
  - BuildHCUPHCUPHCUP2
  - BuildPaulRules
  - BuildProdNH
  - BuildProdNHStaff
  - BuildprodNHStaffAvgsAllStates
  - BuildprodNHStaffAvgsByState
  - BuildrefHCUPPayer\_XCd
  - BuildRefIcd9DrgCd
  - BuildRefIcd9MdcCd
  - BuildRefMarksPosHcupXWalk
  - BuildRefPOSXWalkHCUP
  - buildRptNHDetail
  - BuildrptPhysician\_MA
  - BuildrptPhysician\_MA2

BuildStgNH  
BuildTablesUsedBySProcs  
CheckBoxesForFeas\_HospReport  
CheckBoxesForFeas\_PhysicianReport  
CheckBoxesForFeasNH\_NHReport  
CheckBoxGroupsForFeas\_HospReport  
CheckBoxGroupsForFeas\_PhysicianReport  
CheckBoxGroupsForFeasNH\_NHReport  
CheckForNewMassMedBoardFile  
CheckForPopStgMassMed  
CheckForValidateMassMed  
CheckForVerifyMassMed  
CheckRecentReports  
CheckUserAccess  
CheckUserAccountType  
CheckUserForCorp  
CheckUserIsActive  
CheckUserReportsRun  
CrazyDonkeys  
CrazyDonkeys2  
CrazyDonkeys3  
CreatePOSMassTable  
CreateProdHCUP\_MA  
CreateProdHCUPCoreMA  
CreateRptNH  
DamnDonkey  
DamnDonkeysGoneWild  
DamnDonkeysGoneWild\_Works\_4  
DamnDonkeysGoneWild2  
DamnDonkeysGoneWild3  
DamnDonkeysGoneWild4  
Dev\_GetPhysicianList  
DoctorReport  
DonkeysForChristmas  
DonkeyTest2  
DoNothing  
DRReport  
feas\_CAHPSDone  
feas\_CAHPSGetResults  
feas\_CAHPSSubmitResults  
Feas\_CheckForNewMA\_HCUP\_CoreFile



Feas\_CheckForNewMassMedBoardFile  
Feas\_CheckForNewNHFile  
Feas\_CheckForNewPOSFile  
Feas\_CheckForPopProdHCUPCoreMA  
Feas\_CheckForPopRptAdvMethHCUPCoreMA  
Feas\_CheckForPopStgHCUPCoreMA  
Feas\_GetHospList  
Feas\_GetHospList\_BACKUP  
Feas\_GetHospList2  
Feas\_GetPhysicianList  
Feas\_GetPhysicianList\_Backup  
Feas\_GetPhysicianList2  
Feas\_GetPhysicianSpecialtyList  
feas\_HospReport  
feas\_HospReport\_BACKUP  
feas\_HospReport2  
feas\_HospSavedReport  
feas\_PhysicianReport  
feas\_PhysicianSavedReport  
Feas\_PopulateProdHCUPCoreMA  
Feas\_PopulateRptAdvMethHCUPCoreMA  
Feas\_PopulateStgHcupCore\_MA  
Feas\_PopulatestgPOS  
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feasNH\_GetNHList\_Backup  
feasNH\_GetNHList2  
feasNH\_NHDeficienciesReport  
feasNH\_NHReport  
feasNH\_NHSavedReport  
FindCorpUser  
FindUser  
FindUserByEmail  
FIX\_rptNHDateOfLastInspection  
FIX\_rptNHDateOfLastInspection2  
GetCorpEmployeeAccounts  
GetCorpStatement  
GetHospList  
GetHospList\_New  
GetHospList\_Original  
GetHrrNum  
GetMDList

GetMDListBackup  
GetNHList  
GetPTCAVolume  
HospReport  
HospReport\_Original  
ImGOingDonkeyCrazy  
ImportNewData  
LogErrors  
LogLogin  
LogStoredProcedure  
LoopyLoop2  
MassMedBoardDTSImportComplete  
MDReport  
MoreDonkeydom  
NHGroupNames  
Populate\_idMMBPhysicianID  
PopulateFiveMileCol100Thru999  
PopulateFiveMileCol10Thru99  
PopulateidMmbPhysId  
PopulatePOSMass  
PopulatePOSMaster  
PopulaterefHcupAhalCoreID  
PopulateRefPhysicianHospAssoc  
PopulaterptHosp  
PopulateRptMassMedBoard  
PopulaterptPhysician\_MA  
PopulateStgMassMedBoard  
PopulateStgUPIN  
PopulateZipLatLongFromZCTA  
POSConversion  
RecentReports  
RecentReports1000  
RegisterCorp  
RegisterUser  
SelectCommand  
SetCorpStatement  
SetNewPW  
ShrinkDBXXX  
SpaceUsedXXX  
TestDynamicColumnNaming  
TestFeas\_PhysicianReport

TestHospReport  
TestRegisterUser  
UniqueMassMedBoardPhysicians  
UpdateidMassMedBoardPhysicianID  
UpdateRptMassMedBoardPhysicianID  
UpdateRptNHDateOfLastInspection  
UpdateRptNHPhoneNumber  
UpdateRptPhysician\_MA2  
UpdaterrptPhysician\_MAPhysicianID  
ValidateMassMedBoard  
VerifyMassMedBoard

- Tables
  - \_Dev\_CAHPS\_AnswerID
  - \_Dev\_CAHPS\_QuestionID
  - \_Dev\_CAHPSurveyID
  - \_Dev\_CAHPSurveys
  - \_DevIssues
  - \_Hospitals
  - \_HospPOS
  - \_NewMasterHosp
  - \_TestHospTake1
  - \_TestHospTake2
  - AdvancedMetricsTest1
  - AdvancedMetricsTest3
  - AMT7
  - appCorpID
  - appCorpSubscription
  - appCorpSubscriptionTrans
  - appCorpSubscriptionTransUsers
  - appDataImport
  - appIdImport
  - appSubscription
  - appSubscriptionTrans
  - appUserAccount
  - appUserID
  - appUserLoginTrans
  - 'CM4\_20~1#DBF\$'
  - Conditions1
  - Database
  - dbo\_vwHQL\_FTNT
  - dbo\_vwHQL\_HOSP

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dbo\_vwHQI\_PCTL\_MSR\_XWLK  
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dbo\_vwNHC\_GEOGRPHY  
dbo\_vwNHC\_MSR  
dbo\_vwNHC\_NH  
dbo\_vwNHC\_SRVY\_DFCNCY  
dbo\_vwNHC\_SRVY\_DT  
dbo\_vwNHC\_STF  
DBObjectsList  
dmCBSA  
dmCBSAProvider  
dmOldMSA  
dmPhysiciansWithSanctionsOct04  
dmProvider  
dmSupplier  
DRG\_Cases1  
DRGFreq  
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ErrorMessages  
Feas\_HCUPAdvancedMetrics  
FEAS\_TestRptPOS  
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HCUPReportExperiment  
Hosp1\_FieldDesc  
HospData1  
hstReports  
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ICD9DiagnosticCode  
ICD9DRG  
ICD9MDC  
ICD9ProcedureCode  
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MA\_SID\_2002\_CORE  
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memUserSubscription  
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Opl540904  
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POSDDataTable\$Print\_Area  
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POSMaster  
POSMasterMassachusetts  
POSNewMexico  
POSTestWithExcel  
prodHCUPCore\_MA  
prodMassMedBoard  
ProdNH  
prodNHStaff  
prodNHStaffAvgAllStates  
prodNHStaffAvgByState  
prodPOS  
prodPOSMaster  
profAccounts  
ProvCasesCMI  
rawHCUP\_Core\_MA  
rawPOS  
RawZipCodes03  
refAHAID  
refCAHPSTest  
refHcupAcuteStrokeDiag  
refHCUPAdrgRiskMortalityCd  
refHcupAdrgSevCd  
refHcupAhalCoreID  
refHCUPAMIDdiag  
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refHCUPATypeCd  
refHcupChfDiag  
refHCUPDisp\_XCd



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refHCUPHipDiag  
refHcupHipFractDiag  
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refHCUPPay\_XCd  
refHCUPPayCd  
refHCUPPayerCd  
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refHCUPPedHeartSurg\_2D  
refHCUPPedHeartSurg\_2P  
refHCUPPedHeartSurg\_6P  
refHCUPPI\_CbsaCd  
refHCUPPI\_Ruca4Cd  
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refIcd9MdcCd  
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refMarksPosHcupXWalk  
refMmbProviderID  
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refNHFieldGroups  
refPhysicianFieldDescFind  
refPhysicianFieldDescReport  
refPhysicianFieldGroups  
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refPOSTerm\_CD  
refPOSType\_Action  
refPOSType\_Control  
refPOSTypeFacilityCD  
refPOSXWalkHCUP  
refReportCategoryDesc  
refReportParameterGroups  
refReportParameters  
refSProcType  
refSubscriptionType  
refTransactionType  
refUPINProvSpecCd  
rptAdvMetHCUPCoreMA  
rptAdvMetHCUPCoreMABackup  
rptHCUP\_PTCA  
rptHosp  
rptMassMedBoard  
rptNH  
rptNH\_Backup  
rptNH2  
rptNHDetail  
rptPhysician\_MA  
rptPhysician\_MA2  
SEP04  
Sheet1\$  
stgHcupCore  
stgHCUPCore\_MA  
stgMassMedBoard  
stgNH  
stgPOS  
stgUPIN  
TablesUsedBySProcs  
testbit

TestPtcaVolume  
UPIN  
Wage\_hist  
xHCUPDataTable  
xPOSDDataTable  
xProdHCUP\_MA  
xxxDonkeysGoneWild  
xxxDonkeyTest  
xxxrefMmbProviderQuery  
zcta5  
ZipCodes  
ZipCodesFiveMileRadius  
ZipHsa  
ziphsahr03  
ziphsahr03\$  
ZipLatLong  
• Views  
  \_BadMassMedBoard  
  \_HospTake1  
  \_MasterHospitals  
  AdvancedMetrics  
  AdvancedMetricsSums1  
  AdvancedMetricsTest2  
  AdvancedMetricsTest4  
  AdvancedMetricsWithRatios1  
  AhaIDs  
  BuildNHDetailReport  
  BuildNHReport  
  BuildRptNH  
  CBSAProvider  
  CheckMassMed\_HospAssoc  
  Conditions  
  Feas\_rptHospital  
  HCUPData  
  ICD9DiagCodeDesc  
  ICD9DRGCodeDesc  
  ICD9MDCCodeDesc  
  ICD9ProcCodeDesc  
  MarksView  
  MassachusettsPhysicians  
  MassMedBoardZip

MatchUPINLevel1  
MatchUPINLevel2  
MatchUPINToMassMed  
MoreAdvancedMetricsJunk  
NHAvgDefAll  
NHAvgDefByState  
OtherHospitals1  
PhysiciansPerHospital  
POSDData  
Procedures  
ProviderNumbers  
Providers  
RecentErrorMessage  
RecentLoginActivity  
RecentReportActivity  
RecentStoredProcedures  
rptMassMedBoardFieldLengths  
StoredProcedureUsage  
UniqueMassMedBoardPhysicianIDs  
UPINLastName  
WorkOnReportingHCUP2

Feasibility Phase Prototype

- Web Application Source Code
- Web Page (except for content and pictures)
- Data Import Program Source Code
- NHIC UPIN Data Miner

Documents

- Security Analysis
- Functional Specification for Web Site V1
- Functional Specification for Web Site V2
- Revised Levy-Jennings Chart (nealsproposedchart.xls)

Physician Data Website Extraction Programs

Source code for programs that extract data for physicians licensed in the following states:

AZ

AZ Updater

CA

CO  
CT  
DE  
DC  
FL  
GA  
IN  
MA  
MA - Updater  
MI  
MO  
MT  
NC  
NH  
NJ  
NV  
NY  
OH  
PA  
RI  
SC  
TN  
VA  
WV  
WI



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSFILED  
CLERK'S OFFICE

1. Title of case (name of first party on each side only) Paul O'Mara, et al. v. Mark J. Donnelly, et al.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.  
N/A
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
YES ☐ NO ☒  
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?  
N/A YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).  
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?  
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
N/A YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Dale C. Kerester, Esq., Lynch, Brewer, Hoffman  
 ADDRESS & Fink, LLP, 101 Federal Street, Boston, MA  
 TELEPHONE NO. (617) 951-0800

JS 44  
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Paul O'Mara and Neal O'Mara

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Middlesex, MA  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

Mark J. Donnelly, Sebago Partners, Inc.  
and UCompareHealthcare, LLC  
DISTRICT COURT  
DISTRICT OF MASS.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Dale C. Kerester; Lynch, Brewer, Hoffman  
& Fink, LLP; 101 Federal Street, Boston, MA  
02110; (617) 951-0800

**ATTORNEYS (IF KNOWN)**

James B. Zimpritch, Esq.; Pierce Atwood  
One Monument Square; Portland, ME 04101  
(207) 791-1100

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

17 U.S.C. §§ 101, et seq.

Declaratory Judgment, copyright action for software design and development, as well as related state law claims for damages

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

**DEMAND \$**

Declaratory judgment, preliminary and permanent injunction and damages

CHECK YES only if demanded in complaint:

**JURY DEMAND:**

☒ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

N/A

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

9/7/05



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_